# VIRGINIA LAW REGISTER.

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We have examined specimen pages of the proposed annotated Code of Virginia by Mr. John Garland Pollard, and have no hesitation in pronouncing the general style, get-up, paper and press work as equal to the best of such publications, and superior to most. The work will embrace all amendments up to the adjournment of the General Assembly of 1904, thus avoiding the necessity for a similar publication by the state. It will represent a deal of labor, the benefits of which to the profession, from the standpoint of time-saving and accuracy, are obvious and substantial.

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**Notaries Public.** It seems timely to call the attention of notaries public in this state to the fact that the Act of March 10, 1902 (Acts 1901-2, p. 147), requires them to affix a statement of the expiration of their term of office only to acknowledgments. The attaching of such a certificate to an affidavit, protest or other official act of a notary is no more necessary than it is to an acknowledgment taken before a court clerk, justice of the peace, commissioner in chancery or other official empowered by statute to take acknowledgments. In a word, the act embraces only "acknowledgments" taken before "a notary". There is, of course, no objection to the addition of the certificate—other than it is surplusage and that it engenders a suspicion that the officer is not familiar with the law of his office.

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**Acknowledgments of Married Women.** In *Geil* v. *Geil, ante,* page 530, which see, an alleged defective certificate of acknowledgment of a married woman was declared sufficient, and two contrary decisions of the court were overruled. A correspondent has enquired of us why the Act of February 29, 1892 (Acts 1891-2, p. 798, Pollard's Supplement, sec.

2298*a*) was not invoked and made the basis of the decision. That act is entitled "An Act to quiet titles to real estate in the commonwealth", and provides generally a limitation of ten years after the recordation of a deed within which the question of the sufficiency of the acknowledgment may be raised. The answer to the enquiry is that the act, while at first glance covering any "writing purporting to convey any real estate", is by its further terms confined to deeds "where the purchase money has been paid". The deed in the Geil case was one of gift, and the act makes no provision concerning deeds to donees or volunteers. Therefore and properly, no mention was made of it by the court.

The constitutionality of the act was drawn into question, because of the alleged defective title, stated above, but was of course not passed upon. The spirit of the act seems an excellent one, and we see no reason why, notwithstanding the court's ruling in the same direction, the scope of the statute should not be broadened so as to include all deeds which form links in titles that need quieting. Surely ten years is sufficient time to allow even a married woman to change her mind. By such a statute, drawn with a title beyond technical objection, the ghost of many a substanceless claim would be laid, and the policy of the law, as declared by the court, "to uphold certificates of acknowledgments," would be furthered.

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**Act of March 7, 1900.** An important ruling of the lower court, in *Geil* v. *Geil,* was not passed upon by the Court of Appeals. The Circuit Court of Rockingham county adjudged that the Act of March 7, 1900, the Married Womans Act (Acts 1899-1900, p. 1240) is unconstitutional and void, in so far as it applies to real estate acquired by the wife prior to the passage of the Act. This ruling, if affirmed by our court of last resort, would be far reaching in its consequences, and would induce confusion and doubt as to land-titles, where clearness and precision are of paramount concern. The statute was before the court in *Bank* v. *Beard,* 100 Va. 687, but the court there stated that it did not question the right of the legislature to pass statutes which reach back to and change or modify the effect of prior transactions, where such laws are not forbidden *eo nomine* by the constitution, and no other objection exists to them than their retrospective character.

**A Familiar Friend.** Next to the man who sits behind one at the play and explains to his companion thoughout the performance what it is all about, we nominate for the ideal bore the lawyer who approaches another at the conclusion of a lost case and tells him how he might have won it and just where his mistake lay. As a rule, whatever degree of equanimity one may possess, criticism, express or implied, at such a time is far from acceptable. As another rule, the opinion of the critic is worthless, not being founded on any thorough knowledge of the law or facts of the case, but based often and largely upon developments which could not have been foreseen. Again, the wise man is too often a court-room lounger, who, weary of his empty office, seeks a less dull environment in which to while away his time. He awaits the end of the trial and espying his victim, approaches him with some such remark as, "Well, old man, if you hadn't put that last witness on the stand, you would have had a verdict"—or, "your mistake lay in not asking an instruction on this point"—or, more frequently and exasperatingly, "you should have submitted the case without argument." Little or no time is given the victim to explain that the witness had made a written statement to a contrary effect, or that the Court of Appeals had recently disapproved a similar instruction, or that the question of a different result after argument is necessarily speculative. The judgment of disapproval, though at times clad in the garb of sympathy, is always final. The only safety lies in flight, if the acquaintance is to remain unaffected—the only revenge, in thoughts, which, if expressed, would be actionable under section 2897 of the Code.

We all know him. He is a member of every bar.

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**Contempt.** The law of contempt of court has recently been considered by the Supreme Court of Missouri in the case of *State* v. *Shepherd,* 76 S. W. 79. An information was filed in that court by the attorney-general of the state, setting forth that the defendant, as publisher of a weekly newspaper in Missouri, published in his paper the following:

"When a citizen of Missouri stops long enough to think of the condition of affairs in his state, it is enough to chill his blood. A grand jury in Cole county has just found indictments against four members of the highest law-making body in the state, and the St. Louis grand jury has heard evidence

within the past few months that, if it had the necessary jurisdiction, would have indicted many other members of the State Senate. The Missouri citizen has also seen the Cole county grand jury dissolved before the work mapped out for it was hardly begun, on the advice of the Attorney General of the state. They also see the Chief Executive sitting passively at his office in the Statehouse, not making a move to bring to justice the men who have been proven guilty of boodling in the Missouri Legislature by the St. Louis grand jury, but over whom the authorities of that city have no jurisdiction. And now as the capsheaf of all this corruption in high places, the Supreme Court has, at the whipcrack of the Missouri Pacific Railroad, sold its soul to the corporations, and allowed Rube Oglesby to drag his wrecked frame through this life without even the pitiful remuneration of a few paltry dollars. Learned men of the law say that Rube Oglesby had the best damage suit against a corporation ever taken to the Supreme Court. This very tribunal, after reading the evidence and hearing the arguments of the attorneys, rendered a decision sustaining the judgment of the lower court, which decision was concurred in by six of the seven members of the court. This is usually the end of such cases, and the decision of a Supreme Court, once made, usually stands. But not so in the Oglesby case. Three times was this case, at the request of the railway attorneys, opened for rehearing, and three times was the judgment of the lower court sustained. But during this time, which extended over a period of several years, the legal department of this great corporation was not the only department which was busy in circumventing the defeat of the Oglesby case. The political department was very, very busy. Each election has seen the hoisting of a railway attorney to the Supreme Bench, and, when that body was to the satisfaction of the Missouri Pacific, the onslaught to kill the Oglesby case began. A motion for a rehearing was granted, and at the hearing of the case it was reversed on an error in record of the trial court, and was sent back for retrial. That was in the early part of the year 1902. The case was tried in Sedalia before Circuit Judge Longan, one of the ablest jurists in the state, and we have been informed that no error was allowed to creep into the record at the second trial. Again the jury rendered judgment in favor of Oglesby for $15,000, and again the case was appealed to the Supreme Court. An election was coming on, and the railroad needed yet another man to beat the Oglesby case. The Democratic nominating convention was kind, and furnished him, in the person of Fox. The railroad, backed by four judges on the bench, allowed the case to come up for final hearing, and Monday the decision was handed down, reversed and not remanded for retrial. The victory of the railroad has been complete, and the corruption of the Supreme Court has been thorough. It has reversed and stultified itself in this case until no sane man can have any other opinion but that the judges who concurred in the opinion dismissing the Oglesby case have been bought in the interest of the railroad. What hope have the ordinary citizens of Missouri for justice and equitable laws in bodies where such open venality is practiced? And how long will they stand it? The corporations have long owned the Legislature, now they own the Supreme Court, and the citizen who ap-

plies to either for justice against the corporation gets nothing. Rube Oglesby and his attorney, Mr. O. L. Houts, have made a strong fight for justice. They have not got it. The quivering limb that Rube left beneath the rotten freight car on Independence Hill, and his blood that stained the right of way of the soulless corporation, have been buried beneath the wise legal verbiage of a venal court, and the wheels of the Juggernaut will continue to grind out men's lives, and a crooked court will continue to refuse them and their relatives damages, until the time comes when Missourians, irrespective of politics, rise up in their might and slay at the ballot box the corporation-bought lawmakers of the state."

A rule to show cause having been granted, the defendant on the return day appeared and made answer. After argument and consideration, it was held, among other things, that that court has inherent power and juricdiction to punish summarily civil and criminal contempts, whether direct or constructive; that the constitution of Missouri, guaranteeing the right of "trial by jury as heretofore enjoyed" does not confer the right of jury trial in contempt cases; that one adjudged guilty of criminal contempt in proceedings regularly instituted and conducted, after notice to him, plea and appearance by counsel, has had the benefit of due process of law under the state and federal constitutions, and that the constitutional freedom of speech and liberty of the press consists of the right to speak the truth and to freely publish whatever one pleases, with due responsibility therefor, but does not include the right to scandalize courts, or to libel private citizens or public officers; that "where vituperation begins, the liberty of the press ends."

The defendant was adjuged guilty.[1]

The elaborate opinion of the court, by Marshall, J., cites and considers more than one hundred cases, among them and at some length, *Commonwealth* v. *Dandridge,* 2 Va. Cas. 409, but omits all mention of *Carter* v. *Commonwealth,* 96 Va. 791, in which substantially the same leading principles were ably vindicated by Judge Keith, to-wit, the power inherent in courts of self-defense and self-preservation. It is to us a source of regret that as conservative a body as was the Virginia Constitutional Convention of 1901-2, should have so amended our organic law as to give the legislature the right to qualify these inherent and absolutely essential powers of a court. "The general assembly may regulate the exercise by courts of the right to punish for contempt." Constitution 1902, section

[1] We learn through the newspapers that a fine of five hundred dollars was imposed, which was promptly paid by a fund, raised through popular subscription.

63. Should another act similar to that of February 26, 1898 (Acts 1897-8, p. 548), which was declared unconstitutional in *Carter's Case, supra,* be passed by the general assembly, we trust that our courts will be able to see their way clear to annulling it for the reason that regulation does not mean abrogation. The idea of a court having to submit to a jury a question of even "indirect contempt," seems to us far from conservative or prompted by any real condition in our midst. But that is not all. If the legislature may, under the power of regulation, classify contempts into "direct" and "indirect," why should it not make disobedience to the process of a court "indirect" and require that a jury shall be impanneled to say whether it will allow a court to punish, in any event, one who deliberately violates an injunction or other order, or at most to impose a nominal penalty? It was in passing upon an act like this that an Oklahoma jurist not long ago said: "No self-respecting judge would retain his seat with such a statute on the books."

Our general assembly has not passed such a law, however, and we trust that it will leave the entire subject to the courts of the state, by which this summary power has to our knowledge never been abused.

Nothing that we have said should be taken to justify the course of the Supreme Court of Missouri upon the merits of the Oglesby case. If its history as given by the editor, is correct, the appellate practice of that state, in the matter of unlimited rehearings, is nothing short of abominable, and a reflection upon the cause and course of justice throughout the entire country. It is in the same general class with a case mentioned in *Case and Comment* for October, now pending in the Court of Appeals of New York, after seven trials below and appeals to intermediate tribunals, for injuries received by a brakeman upon a railroad, and suit instituted therefor, twenty-one years ago.